

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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STATE FARM FIRE AND CASUALTY  
COMPANY, as subrogee of SUZANNE  
AGURKIS,

Plaintiff,

-against-

ADVANCED CHIMNEY, INC.,

Defendant.  
-----X

**ORDER**

13-CV-4608 (ADS)(AKT)

**APPEARANCES:**

**Cozen O'Connor**

*Attorneys for the Plaintiff*

45 Broadway, Suite 1600

16th Floor

New York, NY 10006

By: Robert W. Phelan, Esq., Of Counsel

**NO APPEARANCE:**

*The Defendant*

**SPATT, District Judge.**

On August 15, 2013, the Plaintiff State Farm Fire and Casualty Company, as subrogee of Suzanne Agurkis (the "Plaintiff"), commenced this action against the Defendant Advanced Chimney, Inc. (the "Defendant"), seeking to recover amounts the Plaintiff reimbursed Agurkis for damage caused by a fire in her residence where the Defendant had previously completed remediation and repair work of the fireplace.

On October 21, 2013, the Clerk of the Court noted the Default of the Defendant. On November 5, 2013, the Plaintiff moved for a default judgment. On November 6, 2013, the Court

respectfully referred this matter to United States Magistrate Judge A. Kathleen Tomlinson for a recommendation as to whether the motion for a default judgment should be granted, and if so, (1) whether damages should be awarded, including reasonable attorney's fees and costs, and (2) whether any other relief should be granted.

On August 11, 2014, Judge Tomlinson issued a thorough Report and Recommendation recommending that the Court enter a default judgment against the Defendant and that the Plaintiff be awarded \$173,845.55 in damages for losses incurred; pre-judgment interest to be calculated separately for each of Plaintiff's nineteen payments from the date on which payment was made through the date of entry of judgment at the rate of 9% per annum; and post-judgment interest on its monetary award, to be calculated pursuant to 28 U.S.C. § 1961(a).

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Tomlinson's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Tomlinson's Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

**ORDERED**, that Judge Tomlinson's Report and Recommendation is adopted in its entirety; and it is further

**ORDERED**, that the Plaintiff's motion for an award of damages against the Defendant is granted in the amount recommended by Judge Tomlinson, namely \$173,845.55 in

damages for losses incurred; pre-judgment interest to be calculated separately for each of Plaintiff's nineteen payments from the date on which payment was made through the date of entry of judgment at the rate of 9% per annum; and post-judgment interest on its monetary award, to be calculated pursuant to 28 U.S.C. § 1961(a); and it is further **ORDERED**, that that the Clerk of the Court is directed to enter judgment as set forth above, and it is further

**ORDERED**, that upon the entry of judgment, the case is closed.

**SO ORDERED.**

Dated: Central Islip, New York  
September 8, 2014

Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge